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In re Application of : DECISION ON
HARLEY, Calvin et al. :
Application No.: 10/562,374 :
PCT No.: PCT/US04/20277 : RENEWED PETITION
Int. Filing Date: 23 June 2004 :
Priority Date: 23 June 2003 : UNDER 37 CFR 1.47(a)
Attorney's Docket No.: 38797-8004.US00 :
For: Compositions And Methods For Increasing :
Telomerase Activity :
:

This is a decision on applicant's "Renewed Petition Under 37 C.F.R. 1.47(a) and Request for Reconsideration," filed in the United States Patent and Trademark Office on 09 March 2007, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, David M. Miller-Martini.

BACKGROUND

On 23 June 2004, applicants filed international application PCT/US04/20277, claiming a priority date of 23 June 2003. The thirty-month for paying the basic national fee in the United States expired at midnight on 23 December 2005.

On 23 December 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee.

On 08 May 2006, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b), the surcharge for late filing of the oath or declaration and a copy of the sequence listing in computer readable format were required.

On 07 September 2006, applicants filed a response to the Notification of Missing Requirements including, *inter alia*, an executed declaration and a petition under 37 CFR 1.47(a) requesting acceptance of the declaration on behalf of the non-signing inventor David M. Miller-Martini.

On 09 November 2006, the Office mailed the "Decision On Petition Under 37 CFR 1.47(a)," dismissing applicants' petition without prejudice indicating that applicants have not provided evidence that a copy of the complete application was sent to the non-signing inventor's attorney. The Decision also stated that the declaration filed 07 September 2006 was not in compliance with 37 CFR 1.497(a)-(b) and as such, a new declaration was required.

On 12 February 2007, the Office mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) indicating that the instant application has been abandoned because applicants have failed to respond to the Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 08 May 2006.

On 09 March 2007, applicants filed the instant "Renewed Petition Under 37 CFR 1.47(a) and Request for Reconsideration," requesting acceptance of the declaration on behalf of the non-signing inventor David M. Miller-Martini including, a two-month extension fee, a declaration and evidence that a copy of the complete application papers were mailed to the last known address of non-signing inventor David M. Miller-Martini.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) a statement of the last known address of the missing inventor, (3) an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing joint inventor and, (4) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort.

As to items (1) and (2), applicants have submitted the correct petition fee of \$200.00 under 37 CFR 1.17(g) and a statement of the last known address of the non-signing inventor.

With regard to item (3), applicants have filed a declaration executed by the other cooperating inventors and containing an unsigned signature block for the non-signing inventor. This declaration complies with 37 CFR 1.497(a)-(b) and is accepted. Hence, item (3) is satisfied.

With regard to item (4), the declaration of Mr. Peter Dehlinger represents a firsthand statement by the person who presented non-signing inventor David M. Miller-Martini with the complete application. The copy the United States Postal Service return receipt is sufficient to show that the application papers were mailed to the last known address of non-signing inventor David M. Miller-Martini and that they have been received. Further evidence of receipt, is the signature of non-signing inventor David M. Miller-Martini on the USPS return receipt. As such, item (4) is satisfied.

CONCLUSION

Applicants' renewed petition filed under 37 C.F.R. 1.47(a) is **GRANTED**.

The Notification of Abandonment mailed 12 February 2007 is VACATED.

This application has an International Filing Date of 23 June 2004 and a date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) of 09 March 2007.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

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